Bonneville Quarries, Inc.

S/003/071

Mr. Daron Haddock-Permit Supervisor
State of Utah, UDOGM
P.O. Box 145801
Salt Lake City, Utah 84114-5801

April 22, 2005

Dear Mr. Haddock,

Please find here a copy of a letter that I sent to Mr. David H. Murphy, Assistant Field Manager, Salt Lake Field Office, BLM in reference to his response to File # U-77820 (BLM), Grouse Creek Quarry Notice of Intent to Commence Small Mine Operation as submitted to his office on Mar. 21, 2005 by Jerome L. Bown et al and Bown Fine Quality Stone, Inc. For your reference and review.

Sincerely,

William L Bown

William L Bown, for Claimants of UMC-353624

842 West 400 North • West Bountiful, UT 84087 • Phone/Fax (801) 295-0601

Bonneville Quarries, Inc.

Mr. David H. Murphy – Assistant Field Manager
USDI-BLM
Salt Lake Field Office
2370 South 2300 West
Salt Lake City, Utah 84119

April 21,2005

RE: U-77820

Dear Mr. Murphy,

I am in possession of a letter dated April 11, 2005 from you to Mr. Jerome L. Bown of Manti, Utah. The letter is your response to a Notice of Intent filed with your office by Mr. Bown on Mar. 21, 2005 and assigned as case file # U-77820. The Notice addresses Mr. Bown's intent to open a quarry for the removal of "Quartzite" stone.

The letter goes on to inform Mr. Bown that the activities he is proposing appear to lie within Federal Land whereupon there is a current Placer Mining Claim. As representative of the claimants of the Golden Eagle #5 UMC 353624 Placer Claim, please be advised that we have entered into a lease agreement with Mr. Bown for the purposes outlined in the Notice that he has submitted. We are aware of, and in support of his actions.

Imagine then, our alarm as your letter of response begins to assail the validity of the subject mineral deposit. Perhaps Mr. Bown was not descriptive enough for those reviewing his Notice in referring to the material simply as "Quartzite", but did he not also submit a rather definitive photograph of the exact and obvious outcrop section of "Thin Cleavage Quartz Schist" to be developed, together with a very detailed and accurate site map which pinpointed the on ground location of the Notice activity? We are quite certain that he did. The accompanying photo itself demonstrated the material as "Oakley type Quartzite" from the "Dove Creek Formation" which has previously been determined to be a locatable material under the mining law. The photo clearly demonstrates the indicative relative thin, well developed cleavage seams present only in this form of material, and not found in common quartzite. I have enclosed another copy of the same image for your instant review. Look at the deposit pictured. Come on now, a validity report? What for? Is your office the only one around not up to speed on the locatability of this particular material? Do you have any geologists in your office? If not you could bring one over from the State office, or better yet maybe a knowledgeable, yet unprejudiced geologist functioning somewhere in the private sector. If he or she is not blind they will require all of about two seconds to confirm that the outcrop pictured is in fact the "Oakley" type quartzite, more accurately defined as Dove Creek Formation Quartz Schist. Mr. Bown was informed that such an undertaking would likely require 60 days! I'm sorry to tell you this, but that doesn't speak very well to the ability of the people you have there performing these validity reports. Either they are unbelievably inept, or they have some sort of an agenda. Your field man, Mr. Michael Ford is extremely well acquainted with the subject deposit, and the material that it consists of. In

fact, it may interest you to know that at one point, a couple of years ago, in his ongoing quest to render the talus portions of the area claims Public Sales Areas, Mr. Ford offered this claimant a trade of sorts; claimant's talus slides for the ledges or outcrops from which to extract the thin cleavage material at issue. Now, in this response to Mr. Bown's Notice, which we suspect was actually penned by Ford, all of a sudden, the validity of the subject material is in some sort of question. Where is the consistency? Where is the credibility?

In U.S. vs. Bown (copy accompanying), Mr. Robert Dalness, a geologist for the BLM prepared a schematic of the Dove Creek Formation ("Oakley" type Quartzite). The formation is in the shape of an upside down "T" running north and south. Beginning south of Oakley, Idaho then running south for forty miles plus into Utah with the southwestern portion of the "T" clearly covering the subject deposit. It was also determined in this case that although the formation itself is immense, areas amenable to material extraction within it are extremely limited. We are quite certain that you and your office are well aware that the material Mr. Bown proposes to extract in his Notice is in fact the "Oakley" type quartzite from within the Dove Creek Formation, and is therefore, locatable. We are mystified by the call for a validity report.

Please note that all of the claim locations in the area cover all of the quartz schist, or "quartzite" within the sub-divided boundaries of the respective claims in whatever it's present disposition, whether talus or outcrop. The "Findings of Fact and Conclusions of the Law" in U.S. vs. Bown do not exclude the outcrops, in fact they are referred to many times in the narrative, but merely establish the talus portions of those claims as also valid. The validity of the thin cleavage portions was not at the time of the ruling, nor is it presently in doubt by anyone it seems, but your office.

This deposit has been through the courts, the Dove Creek Formation has been through the courts. The subject quartz schist has already been found to be a locatable variety. In this instance, a validity report would accomplish nothing but a colossal waste of the operator's time and taxpayer money, and would represent an egregious lapse in fiscal responsibility. Surely your office is quite aware of the uses for the material proposed. I don't think that he will propose to use it to sink small sailing vessels. Most reasonably, he likely intends to market it much as the other locatable Quartz Schist from The Formation. The language of your response to Mr. Bown's Notice seems to be nothing more than the usual attempt by BLM to twist current mining regulation definitions and requirements into a bullying instrument to further delay, disrupt, and ultimately retard a prudent man's ability to enter upon the public land for the purpose of responsibly utilizing it for his own good. A right he is guaranteed by law.

Your offer to sell material from the subject claim to Mr. Bown pending completion of a validity study and subsequent report is completely erroneous, and prejudicial, and not real legal. We are informed that Mr. Ford actually promised Mr. Bown that your office could in effect "fast track" his ability to quarry/produce the desired material if he would be willing to "purchase" the stone from BLM. Claimants submitted a Plan of Operation to your office 8 years ago, which consisted almost exclusively of loose talus removal with

virtually no surface disturbance, we have endured all kinds of ridiculous hoop jumping, bullying, erroneous extra requirements and dubious definitions, and still, 8 years (count them) later we aren't certain as to whether or not we have final BLM approval, yet you can fast track Mr. Bown, when the affect to the surface would be significantly more involved? This is good to know. Perhaps now, we can expect subsequent Plans to be approved in short order.

We must, in the strongest of terms, warn you against any action designed to sell Mr. Bown or anyone else material from our valid claims. Such action legally constitutes purposeful clouding of the title to our claim. Further, your counsel to him to locate over our valid claim is unbelievably misleading and reprehensible. According to Mine Law any claim located over an active, valid claim is null and void the moment it is located. We find it difficult to believe that you have someone in your office willing to mess with the law to this degree. We must insist that your offer to sell Mr. Bown material from the subject claim and deposit pending a validity report be officially retracted by certified notification forthwith, and that such retraction be forwarded to this office for review within 30 days of your receipt of this letter.

Sincerely,

William L Bown

William L Bown – for claimants of UMC-353624

Cc: Daron R. Haddock, UDOGM

Honorable Senator Orrin Hatch
Honorable Congressman Rob Bishop
Jerome L. Bown, Bown Fine Quality Stone, Inc.

EXACT ON GROUND LOCATION OF "GROUSE CREEK QUARRY" NOTICE AREA (U-77820) DOVE CREEK FORMATION QUARTZ SCHIST
G.P.S. COORDINATES AVAILABLE FROM L. KUNZLER - UDOGM

Aug.,199

Sunshine-East Prospect, considered for exploration and development in 1998-1999 along with Sunshine-West Prospect, a similar site 600' west.
Above: showing the flagstone and gravel covered surface with minor soil development.
Below: close-up of rock outcrop face showing the desirable light color and thin bedding of the quartzite.

Fig. E-1

Aug.,199

FOR COMPARISON: DOVE CREEK FORMATION QUARTZ SCHIST OUTCROP AT CLARKS BASIN

United States Department of the Interior

OFFICE OF HEARINGS AND APPEALS

Hearings Division
6432 Federal Building
Salt Lake City, Utah 84138
(Phone: 801-524-5344)

April 28, 1978

UNITED STATES OF AMERICA,	:	UTAH 10737
Contestant	:	Involving the Dislirock No. 1 mining claim located in
v.	:	Section 5, T. 12 N., R. 17 W., SLM, Box Elder County,
JAY BOWN and PRESTON BOWN,	:	Utah
Contestees	:	
UNITED STATES OF AMERICA,	:	UTAH 10740
Contestant	:	Involving the White Ridge No. 1, White Ridge No. 2,
v.	:	Windy Ridge No. 1, Rusty Rock, and Slide Canyon No.
JAY BOWN, PRESTON BOWN, OLIVE BOWN and BRUCE BOWN,	:	1 mining claims located in Sections 1, 2, 3, 10 and
Contestees	:	11, T. 12 N., R. 17 W., and Section 35, T. 13 N. R. 17 W., SLM, Box Elder County, Utah

DECISION

Appearances: Reid W. Nielson, Esq. Regional Solicitor, U.S. Department of the Interior, Salt Lake City, Utah, for Contestant;

Robert P. Hill, Esq., Ray, Quinney & Nebeker, Salt Lake City, Utah, for Contestees.

Before: Administrative Law Judge Rampton.

These contests were instituted by the filing of separate complaints seeking cancellation of the six claims listed, which were located by the contestees and others between 1962 and 1964. The complaints alleged both that the material found within the limits of the claims is not a valuable mineral deposit under Section 3 of the Act of July 23, 1955, and that valuable minerals have not been found within the limits of the claims so as to constitute valid discoveries within the meaning of the mining laws. The contestees filed answers denying the allegations.

At the hearing, and in the posthearing briefs filed, the contestant did not allege that material from the claims had not been removed or sold or that there was not a market for the material. It restricted its evidence and arguments to the issue of whether the minerals claimed by the contestees constitute a "common variety" under the Common Varieties Act (30 U.S.C. § 611).

Summary of Testimony

In support of its allegation, the contestant relied exclusively on the testimony of two Government employees, William M. Dalness, a geologist, and Arthur F. Michalicek, a mining engineer. Mr. Dalness, who has a bachelor's and a master's degree in geology, was assigned to make an investigation of the claims involved in these contests. He first visited the claims on July 5, 1973, with Preston Bown and others. He spent several months investigating the geology, studying the local market for stone in general, and visiting the general area of the claims where the stone was collected or quarried. He testified that the claims are located on a quartzite rock which makes up the Grouse Creek and the Raft River Mountains in northwestern Utah, near Grouse Creek, Utah, and approximately 30 miles south of Oakley, Idaho. In the course of his investigation, he visited and talked to people dealing with stones. He was on the claims at least four times and examined perhaps a dozen nearby operations where the rock is either quarried or gathered from the surface. Among these were the Northern Stone Supply Company of Oakley; the Star Stone Company quarries near Lynn, Utah; the Raft River Narrows area; the Park Valley quarry; and the Curtis-Nelson operation near Lynn, Utah.

He described the material found on the claims as a quartzite rock in the form of talus slopes or rivers of rock where rock is loose and can be picked up on the surface. In his investigation, he compared the material from the claims with the material

being sold by other operators and people who have purchased rock wholesale and sold it retail in the general Salt Lake, Odgen, and Orem, Utah, and Oakley, Idaho, areas. In his investigation, he found several operations which, in his opinion, were quarrying hard, weathered, lichen-covered quartzite, identical to that found on the claims.

Mr. Dalness stated that Preston Bown informed him the contestees had removed 500 to 700 tons per year from the general area of the claims; that Bown did not know how much came from each claim or how much came from the land leased by Bown from the State of Utah; and that only float rock has been removed. From his observation, he said the rock was removed by a hand-picking process and only one in ten is selected. In his opinion, the rock selected from the claims by the contestees is comparable to the rock gathered south of and sold out of Oakley, Idaho, and also to the general type of float rock found in Utah.

He found five major float rocks being sold in the market area. The float rock identified as Rocky Mountain quartzite was priced at $40 to $60 per ton f.o.b. Oakley; the quartzite from Baker, Nevada, wholesaled from $60 to $80; the Desert Stone from Roosevelt, Utah, a hard sandstone, sold for $35 to $80 f.o.b. Salt Lake City, Utah; the Lynn quartzite sold wholesale for $60 to $100; and the Grouse Creek Rock $50 to $80 f.o.b. Salt Lake City. His conclusion was that all the prices were relatively within a given range, none were significantly higher than any of the others, and the rock from the claims or Grouse Creek rock was in the price range that compares with the other float rock included in his survey.

He found that a premium was paid for thinner rock, as thin rock gives a greater coverage per ton. A quartzite from the property of Curtis Nelson, which, in his opinion, for all practical purposes, is the same rock found on the claims in issue, was sold by American Stone for $72.50 a ton f.o.b. Salt Lake City. The Desert Stone, or float sandstone, sold from $35 to $80 per ton f.o.b. Jay Bown's yard in Orem, Utah. He visited the Curtis Nelson yard and observed pallets of rock being prepared for sale to Preston Bown at $60 per ton f.o.b. Lynn, Utah.

In his investigation, he attempted to determine if the rock from the claims had a uniqueness that made it usable for some other purpose that other rocks could not be used for and found no uniqueness as reflected in its wholesale price. He therefore concluded that the rock on the claims was a common variety of stone. (Tr. 54-55).

Arthur F. Michalicek, a graduate from Oregon State University in 1933 with a B.S. in mining engineering, has been employed

by the Bureau of Land Management for 19 years. Since his employment with the Bureau, he has investigated several hundred mining claims throughout the state of Utah. Mr. Michalicek went with Mr. Dalness on the investigation of the claims and the market for the material. In his opinion, the stone found on the claims was not in any way unique, had no superior qualifications to any other stone found in the market area, and was therefore a common variety of stone. (Tr. 81). Further, he testified the stone from the claims did not seem to have a greater demand than any of the other stones on the market.

The contestees called three witnesses, the first being Dr. Lehi F. Hintze, a professor of geology at Brigham Young University, who obtained his B.A. from the University of Utah in 1941, his M.A. in 1949 and Ph.D. in 1955 from Columbia University. Dr. Hintze taught geology at Oregon State University for six years and has been employed in the geology department of Brigham Young University since 1955.

Dr. Hintze prepared a geologic map of Utah and is well acquainted with the stones found in the Raft River/Grouse creek Mountain area.

Asked to describe the characteristics of the Raft River quartzite, he answered:

> The rocks in the Raft River Range are a unique set of rocks in that they exhibit this ability to split down to thin sizes. I don't like to call them quartzite. I think a better name for them is quartz schists, the schist emphasizing the splitability of the rock. Quartzite, per se, don't have this character. And the reason that they have this character is the combination of the quartz and the mica. And the mica lines up perpendicular to pressures that have been exerted on it so that they all line up together and, hence, because of their well developed cleavage, the rock cleaves in response to the microscopic or in some cases megascopic mica plates that are permeated parallel one to another throughout this quartz rock.
>
> The quartzite or the quartz in the rock gives it its hardness and the mica gives it its splitability. (Tr. 95-96).

He testified that similar rock is found in a small area north of Baker, Nevada.

Asked whether, as a geologist, he would characterize the Raft River and Grouse Creek quartzite as a common rock, he answered: "No. Its an unusual rock; its an uncommon rock." (Tr. 98).

Dr. Hintze visited the claims in the company of Preston Bown and others on July 13, 1976, and identified contestees' Exhibit F, a photograph as showing a typical example of the material found on the claims in issue. He identified contestees' Exhibit E as typical of the rock on the claims which can be split into relatively thin pieces and with lichen on the surface. He stated that the rock can be split down to a quarter of an inch thick, but the practical lower limit of thickness of usable rock would be a quarter of an inch up to several inches in thickness. By comparison, sandstone will not split into as thin a piece as the rock found on the claims; and while slate has the same splitability characteristics, the slate is not as attractive for decorative purposes and does not serve the same purpose. (Tr. 104).

Keith P. MacKay, owner of State Stone Company in Salt Lake City, a stone mason, and a wholesale and retail dealer in stone, testified for the contestees. Mr. MacKay has purchased float rock from, and is familiar with, the deposits of building stone in both the Raft River area and the deposits at Baker, Nevada. He identified Exhibit N as a retail price list of stones which he had for sale on August 21, 1976, and identified various stones shown on the list, where they came from, and the retail prices. He had paid Mr. Bown $80 to $100 per ton for the thin-type stone depending on the color, the lichens, and the algae, and stated that the thickness of the stone largely determines the price.

He has been to several of the quarries and locations in the Grouse Creek area, but not to the claims in issue. Concerning the rock purchased from the contestees, he stated:

> I would say it [the price] depends on whether I get it off Preston or Jay or Terrill. . . . And it varies anywhere from 50 dollars to 60 to 65 per ton. I pay Jay more than I do others because he brings in perfect rock ready to lay and so does Preston. (Tr. 140).

He testified he knows where much of rock brought to him comes from generally, and the white quartzite float could be either

Baker, Nevada, rock or Grouse Creek rock. He buys rock from the ranchers in the Grouse Creek area and the price he pays depends on how much they bring and what they consider to be a deal.

He identified item 11 on his sales list (Ex. N) as a thin Grouse Creek quartzite supplied by Jay, Preston, and Terrill Bown and Exhibit 11 to be about the same as that supplied to him by the Bowns. The price paid varies according to the season of the year. He will not pay as much in the fall if he cannot sell it until spring, and he pays Jay and Preston Bown $10 to $15 more per ton because of their skill in picking the rock.

He purchases the same type of rock from John Hechtle in the Oakley area, but the price is lower because the Hechtle rock is thicker.

Preston Bown, a contestee, testified he has been in the stone masonry or stone sales business for 20 years in the Salt Lake Valley. He has visited all of the quarries in northern Utah and southern Idaho and has purchased rock from Curtis Nelson, who has thin float on his land similar to the rock from his claims. He could, however, distinguish the Nelson rock from his by color. Max Cooper, who is in the stone business in Oakley, Idaho, has float rock similar to the Nelson rock on his property; also, there is rock similar to Nelson's and Cooper's found in the various locations in the Raft River Mountains.

He verified that his cousin, two brothers, and other Bowns remove rock from the claims for which he receives $5 a ton royalty. He does not know how much they remove but that it is sold for a little under the price and that the difference in price depends on who is selecting it because of the skill in making the selections and picking the stones. (Tr. 224-26). The rocks he was purchasing from Curtis Nelson for $60 a ton he wholesaled at $100 a ton to Keith MacKay.

As to the limited market for rocks used for pictures or table tops, he admitted some usable rocks could be obtained from other areas. However, the other deposits have a very narrow range of colors.

Statement of the Law

The claims in question were located subsequent to the Act of July 23, 1955, 69 Stat. 368. Section 3 of the Act removes

certain minerals from disposition under the mining laws. The Act provides:

> A deposit of common varieties of sand, stone, gravel, pumice, pumicite, or cinders shall not be deemed a valuable mineral deposit within the meaning of the mining laws of the United States so as to give an effective validity to any mining claim hereafter located under such mining laws: Provided, however, That nothing herein shall affect the validity of any mining location based upon discovery of some other mineral occurring in or in association with such a deposit. "Common varieties" as used in this Act does not include deposits of such materials which are valuable because the deposit has some property giving it distinct and special value and does not include so-called "block pumice" which occurs in nature in pieces having one dimension of two inches or more.

In U. S. Minerals Development Corp., 75 I.D. 127 (1968), the Department set forth the criteria pertinent to determining whether or not material is a "common variety."

> In short, the Department interprets the 1955 Act as requiring an uncommon variety of sand, stone, etc. to meet two criteria: (1) that the deposit have a unique property, and (2) that the unique property give the deposit a distinct and special value. Possession of a unique property alone is not sufficient. It must give the deposit a distinct and special value. The value may be for some use to which ordinary varieties of the mineral cannot be put, or it may for uses to which ordinary varieties of the mineral can be or are put; however, in the latter case, the deposit must have some distinct and special value for such use. . . .
>
> The question is presented as to what is meant by special and distinct value. If a deposit of gravel is claimed to be an uncommon variety but it is used only for the same purpose as ordinary gravel, how is it to be determined whether the deposit in question has a distinct and special value? The only reasonably practical criterion would appear to be whether the material from the deposit commands a higher

> price in the market place. If the gravel has a unique characteristic but is used only in making concrete and no one is willing to pay more for it than for ordinary gravel, it would be difficult to say that the material has a special and distinct value.
> . . . .
>
> When the same classes of mineral used for the same purposes are being compared, about the only practical factor for determining whether one deposit of material has a special and distinct value because of some property is to ascertain the price at which it is sold in comparison with the price for which the material in other deposits without such property is sold.

The Department's position was accepted by the United States Supreme Court in United States v. Coleman, 390 U.S. 599 (1968), where the Court held:

> Thus we read 30 U.S.C § 611, passed in 1955, as removing from the coverage of the mining laws "common varieties" of building stone, but leaving 30 U.S.C. § 161, the 1892 Act, entirely effective as to building stone that has "some property giving it distinct and special value" (expressly excluded under § 611).

The courts and the Department of the Interior have recognized several properties which might give a deposit of building stone "distinct and special value," such as unusual coloration (United States v. Chartran, 80 I.D. 408 (1973), and natural fractures and shaping (McClarty v. Secretary of the Interior, 408 F.2d 907 (1969)).

The case law then is clear that for the special properties of a deposit of an otherwise uncommon variety to qualify the deposit for location under the common varieties act, the properties must meet one of two separate tests. The properties must either make the mineral useful for purposes for which ordinary deposits of the mineral cannot be used, or it must give the mineral additional value, measured by comparing the market price of the mineral to the market price of common varieties, over and above the value for ordinary use.

Findings of Fact and Conclusions of Law

It is undisputed that there is a continuing and expanding market for the material found on the claims in issue. The material can be and is presently being sold at a profit. The basic issue then for determination is limited to whether the mineral found upon the claims is an uncommon variety and still subject to location after July 23, 1955.

The outcroppings of the quartzite or quartz schist, the material for which the claims are located, are found within the Dove Creek formation. This formation is unique from other quartzite deposits in that it contains numerous, thin, parallel layers of mica. Because of these mica layers, the stone cleaves naturally into thin sheets ranging from one-quarter inch to two to three inches in thickness. The colors of the quartz schist range from white to brown and lichens are found on the surface rock. These qualities make the stone highly desirable as a stone facing or veneer for interior and exterior walls and for fireplaces. Because of its extreme thinness and strength, the stone can be easily applied to virtually any wall with little or no additional structural support, and stone fireplaces can even be installed in house trailers. Further, because of its thinness, the stone covers a larger area per unit of weight than any other building stone and shipping and handling costs are less.

Prior to the commercial development of the Dove Creek quartzite, the primary building stone in use in Utah was sandstone. Since that time, the Dove Creek quartzite not only commands a much higher price in the market place than sandstone or other common building stone, but it has virtually entirely supplanted sandstone in the Utah natural building stone market. The mining claims developed in the Raft River Mountains now support a substantial building stone industry in Utah and southern Idaho.

The evidence shows that the Dove Creek quartzite is unique because of its color and cleavage capability. Because of its uniqueness, it is sold for a much higher price on the market than ordinary building stone. Unquestionably, the Dove Creek quartzite meets the test for uncommon variety of minerals as set forth in the Chartrand and McClarty decisions, provided that its occurrence is limited.

The Government made no attempt to rebut the evidence as to the special attributes of the Raft River quartzite. Its position is that the quartzite found on the claims in issue is a common variety because of the availability of similar stone throughout the Raft River formation. The Government experts compared the

material from the contestees' claims with material from other operations in the same area and finding, in their opinion, no discernible difference, concluded that, as part of the Raft River formation, it was a common variety.

No evidence was offered on the extent of the area covered by the Raft River formation. The map (Government Ex. 1) depicts the formation as T-shaped, perhaps 5 miles wide, 30 to 40 miles long in an east-west direction, and an equal distance north-south. Roughly then, the Raft River formation might extend over 350-plus square miles.

If all of the quartz schist in this rather large area were amenable to mining, the Government's position that it is a common variety of rock might be valid. The sheer volume involved alone would dictate such a conclusion.

It is obvious, however, that only limited areas within the formation can be profitably mined. The quartz schist must occur in talus slopes in quantity and quality and also be accessible by road before a successful operation can be undertaken. These occurrences exist on the claims in issue and in other places within the formation which are presently being mined. But if there are any other similar occurrences of stone in the formation not being exploited, the Government offered no testimony about them. I must conclude therefore that, not only is the Raft River quartz schist an unusual and unique building stone as compared to ordinary stone used in the construction trade, but its minable occurrence is limited.

In addition, the evidence shows the stone found on the claims in issue have characteristics which enhance its value over the quartzite being produced from the other operations found in the Dove Creek formation.

The contestees' stone, unlike the various quarried stones from the other operations in the Raft River area, varies widely in color from almost pure white to varied shades of browns. Although Mr. Michalicek testified that there was an area on Curtis Nelson's claims similar to that of the Bown claims, Preston Bown testified that although Curtis Nelson's land did include some slides of fractured quartzite, 95% of Mr. Nelson's stone was gray in color and only about 5% was of the lighter shades comparable to the stone on the Bown claims. Inasmuch as the stone is used as a decorative veneer, the color variations add to its marketability and value.

The Bown claims also contain large "rivers of fractured float rock," which are weathered, mottled and partially covered with

multicolored lichens. The contestees' supply of lichen-covered float rock will last two or three years at the present rate of production, while the float rock on the Nelson claims will last only "a couple of months" at that rate. (Tr. 173, 179). The supply of float rock from the area near Baker, Nevada, has been virtually exhausted. (Tr. 125). Both the weathered effect and the presence of lichens greatly enhance the value of contestees' decorative stone.

Finally, because the stone on the Bown claims to a large extent occurs naturally in large slides of fractured "float" rock, contestees are able to select and sell suitable stone without any need for quarrying, sawing, shaping, or otherwise preparing the stone. Thus, not only does the Bown stone command a higher market price, it is also produced with a much lower overhead than other stones which require processing. As conceded by one of the Government witnesses, if the contestees change their simple manual method of operation to a more modern and efficient method, their profit margin would be even wider. (Tr. 63).

To obtain the most colorful and thinnest pieces is important and premium prices are paid for carefully selected rock. This, however, emphasizes the importance of having a wide variety of readily available, desirable rock. The Bown claims have more varieties of the premium rock than any other operation in the immediate area.

As of the date of the hearing, there were 18 varieties of building stones available on the State Stone lot in Murray, Utah. With four exceptions, the retail prices of these stones ranged from $50 per ton to $125 per ton. The four exceptions were sawed Montana travertine ($200/ton), thin silver quartzite flagstone ($180/ton), thin gold quartzite flagstone ($200/ton and thin quartzite from the contestees' claims ($200/ton). The high price of the sawed travertine reflects the cost of processing. Unsawed travertine was available on the lot for $95 to $110 per ton. Similarly, the prices of the thin flagstone which come from an outcropping of the same formation on which the contestees' claims are located reflect the fact that these stones must be quarried. Only the contestees' stone is sold in its natural state for the higher price without the necessity or additional expense of quarrying or other processing.

There are other uses for the stone from the Bown claims. Thin slabs of quartzite have been sold for $10 per square foot for use as coffee tables and end tables. The stone has also been used as natural "pictures" to be hung on walls, at a price of $5 per square foot wholesale. On the many deposits referred to in the Raft River Mountains by the Government witnesses,

only those deposits on the Curtis Nelson land have sufficient quantity of stone amenable to the manufacture of wall pictures to sustain an economic operation. Mr. Nelson, however, has none of the attractive multicolored stone found on the contestee's claims. (Tr. 236-37).

In summary, I conclude that the building stone found on the claims in issue is a unique and valuable mineral deposit of quartzite which, because of its thin natural cleavages, strength, durability, varied coloration and lichen-covered, weathered effect, in quantity, gives it a higher value and use for purposes beyond the uses of ordinary building stone. It is therefore an uncommon variety subject to location under the mining laws.

The claims are developed and stone from the claims is presently being sold at a profit. There has been a valid discovery on each claim and the contests are therefore dismissed.

John R. Rampton, Jr.
Administrative Law Judge

APPEAL INFORMATION

The contestant, as the party adversely affected by this decision, has the right of appeal to the Interior Board of Land Appeals. The appeal must be in strict compliance with the regulations in Title 43 CFR, Part 4. (See enclosed information pertaining to appeals procedures.)

If an appeal is taken, the adverse party, the contestees, can be served by service upon Robert P. Hill, Esq., at the address listed on page 13.

Enclosure: Information Pertaining to Appeals Procedures.

See page 13 for distribution.

Distribution:
By Certified Mail

Reid W. Nielson, Esq.
Regional Solicitor
U. S. Department of the Interior
6201 Federal Building
Salt Lake City, UT 84138

✓ Robert P. Hill, Esq.
Ray, Quinney & Nebeker
400 Deseret Building
79 South Main Street
Salt Lake City, UT 84101

Standard distribution.